1 Steven L. Weinstein steveattorney@comcast.net 2 P.O. Box 27414 Oakland, California 94602 3 Telephone (510) 336-2181 4 Additional Attorneys appearing on Signature Page 5 Attorneys for Plaintiff and the Classes 6 IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA 7 **SAN JOSE DIVISION** 8 9 LOUIS FLOYD, individually and on behalf Case No. 5:20-cy-01520-LHK of all others similarly situated, 10 STATUS REPORT AND REQUEST TO Plaintiff, 11 VACATE CASE MANAGEMENT CONFERENCE v. 12 SARATOGA DIAGNOSTICS, INC., a 13 California Corporation, and THOMAS PALLONE, an individual, 14 Defendant. 15 16 Plaintiff Louis Floyd ("Floyd" or "Plaintiff") provides the following status report and 17 requests that the Court vacate the case management conference scheduled for October 27, 2021, at 18 2:00 p.m. In support of this request, Plaintiff states as follows: 19 1. Plaintiff filed his Class Action Complaint ("Complaint") on March 1, 2020, against 20 Saratoga Diagnostics, Inc. ("Saratoga") and Thomas Pallone ("Pallone") (collectively 21 "Defendants"). (Dkt. 1.) 22 2. On March 2, 2020 the Court issued summonses directed to Defendants. (Dkt. 5.) 23 3. The Court deemed service on Pallone sufficient on July 13, 2020. (Dkt. 24) 24 4. Plaintiff served Saratoga via the California Secretary of State on August 17, 2020 25 (dkt. 27), placing its deadline to respond to Plaintiff's Complaint on September 8, 2020. 26 5. Neither defendant appeared nor responded to Plaintiff's Complaint in any fashion. 27

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- 6. On October 14, 2020, the Clerk of Court entered default against Defendant Saratoga (dkt. 29) and Pallone (dkt. 33).
- 7. On November 25, 2020, Plaintiff filed his Motion for Class Certification and Request for Leave to Conduct Discovery (the "Motion"). (Dkt. 35.)
- 8. On May 26, 2021, the Court denied the Motion without prejudice, but granted Plaintiff 120 days to conduct limited discovery related to class certification. (Dkt. 42.)
- 9. On June 1, 2021, Plaintiff issued a subpoena to produce documents, information, or objects or to permit inspection of premises in a civil action directed to Onvoy, LLC, seeking to identify the telephone service provider associated with Defendants' fax number.
- 10. On June 28, 2021, Onvoy, LLC responded and identified J2 Cloud Services, LLC as the telephone service provider.
- 11. Plaintiff then issued subpoenas directed to J2 Cloud Services, LLC and J2 Global, Inc. (hereafter "j2"), which sought Defendants' fax records for the relevant time period.
- 12. j2 has since produced some responsive documents. Unfortunately, j2's document production did not include the fax transmission records to identify the proposed class. Further, j2 has confirmed that it has no additional records in its possession.
- 13. Given that no fax records remain to identify individual class members, Plaintiff has decided to move forward with seeking a default judgment on his individual claim. Plaintiff's counsel is currently working to draft the motion for default judgment. Plaintiff expects to file this motion on or before November 30, 2021.
- 14. As a result, Plaintiff respectfully requests that the Court vacate the Case Management Conference scheduled for October 27, 2021.

Respectfully submitted,

LOUIS FLOYD, individually and on behalf of all others similarly situated,

By: /s/Taylor T. Smith

5 Dated: October 20, 2021

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CERTIFICATE OF SERVICE The undersigned hereby certifies that a true and correct copy of the above titled document was served upon counsel of record by filing such papers via the Court's ECF system on October 20, 2021. /s/ Taylor T. Smith